

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 31 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0288
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
PABLO AMAYO CARBAJAL, III,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20080961

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani and Amy M. Thorson

Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Alex D. Heveri

Tucson
Attorneys for Appellant

BRAMMER, Presiding Judge.

¶1 Appellant Pablo Amayo Carbajal, III, was convicted after a jury trial of aggravated assault of a peace officer with a deadly weapon or dangerous instrument, a dangerous offense, and aggravated assault of a peace officer, a lesser-included offense of the charged offense of aggravated assault of a peace officer causing temporary but substantial disfigurement. The trial court sentenced him to concurrent, presumptive prison terms of 10.5 and 2.25 years. On appeal he contends the court erred when it denied his motion for judgment of acquittal on the charge of aggravated assault of a peace officer based on the use of a deadly weapon or dangerous instrument, arguing there was insufficient evidence he had used brass knuckles to strike the officer. He also challenges the sufficiency of the evidence to support the conviction. Finding no error, we affirm.

¶2 A judgment of acquittal should be granted only when “there is no substantial evidence to warrant a conviction.” Ariz. R. Crim. P. 20(a); *see also State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). “‘Substantial evidence’ is evidence that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.” *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). On appeal, we will not set aside the verdict unless it “clearly appear[s] that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury.” *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). Although we review a trial court’s denial of a Rule 20 motion for an abuse of discretion, *State v. Henry*, 205 Ariz. 229, ¶ 11, 68 P.3d 455, 458 (App. 2003), we

review de novo the claim that substantial evidence does not support a jury's verdict, *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993).

¶3 On appeal from a guilty verdict, “we view the evidence in the light most favorable to sustaining the verdict and resolve all reasonable inferences against the defendant.” *State v. Lopez*, 163 Ariz. 108, 112, 786 P.2d 959, 963 (1990). Evidence may be sufficient to support a conviction whether it is direct or circumstantial. *See State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005). Thus, in determining whether there was substantial evidence to withstand a defendant's Rule 20 motion and whether there was sufficient evidence to support the conviction generally, courts do not distinguish between circumstantial and direct evidence. *See State v. Stuard*, 176 Ariz. 589, 603, 863 P.2d 881, 895 (1993) (“Arizona law makes no distinction between circumstantial and direct evidence.”). Consistent with this principle, the trial court here instructed the jurors evidence may be direct or circumstantial, defined both terms, and told them they were to “determine the weight to [be] given to all the evidence without regard to whether it is direct or circumstantial.”

¶4 Viewed in the appropriate light, the evidence established the following. Pima County Sheriff's Deputy Francisco Jimenez responded to a 9-1-1 telephone call reporting an altercation between a man and a woman. The woman had told Carbajal's niece to make the 9-1-1 call and report that she and the man—Carbajal—were in a van and were fighting. The woman in the van later told an officer at the scene she had seen Carbajal with brass knuckles in his hand. When Jimenez arrived at the scene and approached the van, the woman emerged, “crying hysterically.” Jimenez directed

Carbajal to get out of the van, which Carbajal did, assuming a “fighting stance,” with one hand behind his back.

¶5 According to Jimenez, Carbajal lunged at him and began punching at him. Jimenez testified he could not see what was in Carbajal’s right hand, which remained behind his back. The two men struggled and fell on a trailer hitch, with Jimenez ending up on top of Carbajal. Jimenez testified his head did not hit the trailer hitch or the metal of the building. He got Carbajal in a headlock with his right hand and with the other he pressed a button on a microphone attached at his chest and signaled his need for assistance. Jimenez testified, “At that point my left arm wasn’t able to block his right punches, he was able to hit me on the back of my head with something that I felt was really, really hard. I didn’t know what he had in his hand.”

¶6 Another sheriff’s deputy responded and tried to restrain Carbajal. She testified that as she arrived she saw Carbajal pulling away from a struggle with Jimenez. She tried to restrain Carbajal and while “pulling his arm behind his back,” she heard “a clinking sound” as if something had fallen to the ground. She and Jimenez continued to try to restrain Carbajal and ultimately were able to do so with the assistance of a third deputy, who then was joined by others who had responded to the distress call from Jimenez. When Carbajal was lifted by the officers from where he had been standing, they found brass knuckles on the ground. Jimenez, who by then had noticed he was bleeding from the head, was taken to the hospital. He had three deep cuts on his head, which required staple sutures.

¶7 Carbajal contends there was insufficient evidence to support the jury's guilty verdict, pointing to the lack of direct evidence that he had used brass knuckles to hit Jimenez in the head. He also notes his niece's testimony, which conflicted in certain respects with Jimenez's testimony, that Jimenez had hit his head when he had fallen onto the trailer hitch; the fact that blood was found on the trailer hitch and not on the brass knuckles, which were found away from where the two had been fighting; and the treating physician's testimony that Jimenez's injuries had been caused by a blunt rather than a sharp object.

¶8 It was for the jury to assess the credibility of the witnesses, weigh the evidence, and resolve any conflicts in the evidence. *State v. Manzanedo*, 210 Ariz. 292, ¶ 3, 110 P.3d 1026, 1027 (App. 2005). That the jury could have found Jimenez had hit his head on the trailer hitch does not mean there was insufficient evidence to withstand the Rule 20 motion and to sustain the guilty verdict. Rather, when the evidence is such that “reasonable minds could differ on the inferences to be drawn from the evidence,” the court acts properly by denying the motion for judgment of acquittal. *State v. Molina*, 211 Ariz. 130, ¶ 8, 118 P.3d 1094, 1097 (App. 2005), quoting *State v. Sullivan*, 205 Ariz. 285, ¶ 6, 69 P.3d 1006, 1008 (App. 2003); see also *State v. Landrigan*, 176 Ariz. 1, 5, 859 P.2d 111, 115 (1993) (“Since reasonable minds could differ on the inferences to be drawn, the trial judge properly denied the Rule 20 motion.”); *Sullivan*, 205 Ariz. 285, ¶ 6, 69 P.3d at 1008 (if reasonable persons could differ on inferences to be drawn from evidence, which appellate court must construe in favor of upholding court's ruling, then

court properly denied motion for judgment of acquittal and reviewing court must affirm conviction).

¶9 From the direct and circumstantial evidence presented at trial, which included, inter alia, Jimenez’s testimony, the evidence regarding the nature of his injuries, and the doctor’s testimony that the injuries were consistent with blunt force trauma inflicted by brass knuckles, reasonable jurors could find beyond a reasonable doubt that Carbajal had held brass knuckles in his hand when Jimenez initially approached him and had hit Jimenez on the head with them as the two struggled while on and around a trailer hitch. Thus, the trial court did not abuse its discretion in denying the Rule 20 motion, and the guilty verdict on this charge is supported by sufficient evidence. We therefore affirm the convictions and the sentences imposed.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge